

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

In the Matter of:

Amendment of Section 73.622(b),
 Table of Allotments,
 Digital Television Broadcast Stations
 (Salt Lake City, Ogden and Provo, Utah)

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MM Docket No. 99-197
 RM-9573

TO: Chief, Video Services Division

RECEIVED
 JUL 12 1999
 FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

COMMENTS

Telemundo of Northern California License Corporation ("Telemundo"), licensee of KEJT-LP, Channel 48, Salt Lake City, Utah, by its attorneys, hereby submits these Comments on the *Notice of Proposed Rule Making* in the above-referenced matter.¹ By these Comments, Telemundo reluctantly opposes the proposed revisions to the DTV Table of Allotments with respect to Salt Lake City, Ogden and Provo, Utah (the "Utah Plan") because it appears that implementation of the Utah Plan will affect adversely the ability of KEJT-LP to continue to provide specialized programming to the residents of the Salt Lake City area.²

Preliminary, Telemundo salutes the efforts of Kent Parsons, Chapter 62 of the Society of Broadcast Engineers (the "Society"), and other Commission licensees in developing a complex and historic proposal that would facilitate the ability of full-power licensees to co-locate their DTV facilities while also taking into account low-power broadcasters. Telemundo recognizes that the Utah Plan, if implemented, could benefit both public and private interests in the region.

¹ *Notice of Proposed Rule Making* in MM Docket No. 99-197, RM-9573, DA 99-963 (rel. May 21, 1999).

² KEJT-LP is the only low-power television station licensed to Salt Lake City delivering exclusively Spanish-language news, information and entertainment programming.

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As required by the Sixth Report and Order and the Sixth Memorandum Opinion and Order in the DTV proceedings, the proponents of the Utah Plan have worked closely with Telemundo and other affected licensees in consideration of the impact of the allocation changes on the operations of their stations.³ Accordingly, on June 7, 1999, the Society held a “UHF Frequency Coordination Meeting” to which all affected licensees were invited. The proponents allowed representatives from each station to raise concerns about channel changes, interference, expenses and the like. In the spirit of the Commission’s directives, the proponents addressed those concerns and modified the Utah Plan accordingly. Telemundo believed at the time that all licensees consented to those changes.

One of the one hundred-plus channel changes proposed by the Utah Plan involves the allotment of Channel 48 to Ogden, Utah, for full-power DTV service, with the corresponding move of KEJT-LP from Channel 48 to Channel 50. Channel 50 provides the only other frequency on which KEJT-LP can operate to retain its ability to provide its specialized programming service to its current service area while also minimizing interference to other broadcasters. At this time, Brigham Young University (“BYU”) operates K50ES, Tooele and Grantsville, Utah, on Channel 50.⁴ The Utah Plan proposes to accommodate the several full-power DTV channel changes and, more specifically, the KEJT-LP channel change, by moving K50ES from Channel 50 to Channel 52.

Telemundo understood from prior discussions with representatives of the proponents and from BYU’s verbal consent at the UHF Frequency Coordination Meeting that BYU, like all

³ *Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, Sixth Report and Order*, MM Docket No. 87-268, 12 FCC Rcd 14588, at ¶ 182 (1997).

other Utah licensees, consented to the various channel changes included in the Utah Plan. Telemundo also understood that it might have to compensate BYU for the legal, engineering and related expenses required to effectuate the K50ES modification. Accordingly, Telemundo has attempted to negotiate with BYU to obtain a letter evidencing its consent to the K50ES and KEJT-LP channel changes and has offered to reimburse BYU for its expenses and further offered the resources of its in-house director of engineering to assist BYU in reviewing the university's DTV plans.⁵

On June 30, 1999, BYU sent a letter to Telemundo offering its consent to those changes "firmly conditioned upon agreement to and satisfaction of" three items.⁶ The first condition essentially required Telemundo to reimburse BYU for the costs of the K50ES channel change, which Telemundo already had offered to do. The other two conditions, however, interpose constraints heretofore unheard of. In particular, BYU insists that it will consent to move K50ES to Channel 52 only until BYU deems the new Channel "unsatisfactory" or until K50ES's operation on the new Channel is displaced by another broadcaster. Since receiving this letter, Telemundo has attempted to contact BYU to discuss these new conditions.

The latter two "conditions" to BYU's consent are illusory at best: at any time after the Commission approves the Utah Plan and broadcasters undertake massive efforts to implement those changes, BYU could decide for any reason to revoke its consent to Telemundo. In such

...continued

⁴ K50ES is one of ten translators rebroadcasting the signal of KBYU-TV, Provo, Utah, affected by the Utah Plan.

⁵ See letter dated June 29, 1999, from John Terrill, KEJT-LP, to John Reim, KBYU-TV, attached hereto as Exhibit 1.

event, KEJT-LP would be forced to pay for K50WS to return to Channel 50 and then discontinue its own operations, thus depriving Salt Lake City of its only source of Telemundo Network and certain other local Spanish-language programming. In addition, the unilateral revocation of BYU's consent would cause the Utah Plan "house of cards" to tumble. Moreover, such action by BYU would prevent the implementation of the Utah Plan in accordance with the Commission's directive to minimize the effect on low-power broadcasters or in accordance with their representations to the Commission that they would satisfy that directive.

The attachment of these new conditions to BYU's consent to admittedly minor aspect of an elaborate allocation proposal poses an unreasonable risk to Telemundo's ability to continue to provide service to the Salt Lake community without resulting in any public interest benefits. As noted, Telemundo is willing to do its part to facilitate channel changes for its full-power competitors and, moreover, is even willing to reimburse BYU for the costs associated with the modifications to BYU's translator. Nevertheless, Telemundo does not believe that the Utah Plan is in the public interest if it provides the means of depriving Salt Lake City viewers of free, over-the-air access to KEJT-LP's specialized programming.⁷

...continued

⁶ See letter dated June 30, 1999, from Brad Farnsworth, Brigham Young University, to John Terrill, KEJT-LP, attached hereto as Exhibit 2.

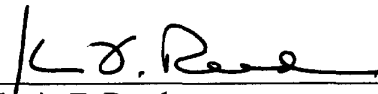
⁷ To the extent BYU withdraws its conditions to the Utah Plan or the Commission considers such conditions to have no effect, Telemundo would no longer oppose the proposal and gladly would withdraw these Comments.

Conclusion

For the foregoing reasons, Telemundo submits that the Utah Plan would not serve the public interest. As such, Telemundo urges the Commission to deny the proposed modifications to the DTV Table of Allotments.

Respectfully submitted,

TELEMUNDO OF NORTHERN CALIFORNIA
LICENSE CORPORATION

By: 
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Its Attorneys

July 12, 1999

Exhibit A

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June 29, 1999

Mr. John Reim
KBYU-TV
2000 Ironton Blvd
Provo, Utah 84606

Dear Mr. Reim,

Last Tuesday we met to discuss the Utah Plan for DTV, Translators, and LPTV stations. I did call you Friday, and you have not returned my call, hence this letter. We concluded our meeting on a positive note, and I hope we can go forward with the Utah Plan. Where do we stand now?

I talked to Camille Hansen today, and she is preparing information for you which will hopefully allow the Utah Plan to go into effect. We need an agreement soon so channel 48 can move now off the present smokestack superfund site this summer.

Telemundo Station Group has asked me to write this letter so they can make plans for the immediate future. They would like me to call them with your answer as soon as possible. The FCC's deadline is July 12, 1999. Your letter on your intentions will be most helpful if it arrives by July 7, 1999

The licensee would like me to review our conversations at KBYU for the record. As I recall you asked how much we would pay for you to move your Tooele-Grantsville translator to channel 52 from channel 50. This translator action is in the Utah Translator Plan created for the DTV Alliance (Alliance) by Mr. Kent Parsons of Monroe, Utah representing the University of Utah, Alliance, and the Society of Broadcast Engineers. I told you that we would not pay any money as a fee to you, but that I would pay to rechannel the translator frequency and provide DTV information. You said that information would be satisfactory in lieu of money. Our San Jose DTV is going on the air within the next two weeks and KBYU is invited to come see what happens to full power DTV in the mountains. You did say you believed that KEJT-LP had no standing in the local allocation effort. I replied that all low power stations, translators, and the general public are a part of the local allocation meeting, which was held at the University of Utah under the auspices of the Utah chapter of the Society of Broadcast Engineers, it's in the commission rules and actions. You have a question of when KBYU has to relinquish channel 52. According to the FCC, it is the date when the nation will begin DTV which is now 2006. In any event, I understand the

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translator will be there until NTSC ends.

We did settle on service from the Telemundo Station Group's Chief Engineer Doug Lung, to review your DTV plans. The review would be limited to his opinion as to whether you were on the "right track" and that such a review would have to fit into Mr. Lung's time schedule. We did discuss Mr. Parsons, who you did not know, who created the Utah Plan and who is available to you any day. You may call Kent at 435-527-3566. We did discuss that on Tuesday June 22, Mr. Parsons, Mr. Byron St. Clair (my engineering consultant), and others were meeting with the FCC on Monday, Tuesday, and Wednesday that week. You did refer Mr. Parsons to Camille Hansen at 202-383-3371 for immediate answers.

At the time I thought we had an agreement, with a consent letter to come from another official of Brigham Young University. However, nothing has come from the University, and I have been unable to reach you.

At this time I believe that we have an agreement in principal with details to be resolved by the 7th of July. Personally, I enjoyed meeting you and am looking forward to an agreement on channel change and a good future relationship.

Thank you for your consideration,

Sincerely


John C. Terrill
General Manager

CC: H. Doug Lung

Exhibit B

JUL-02-1999 15:09

KBYU

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07/02/99 13:45 FAX 202 783 5851

WILKINSON BARKER KNAUER

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June 30, 1999

DRAFT

Mr. John Terrill
Stations KILE-TV and KEJT-LP
2260 Harrison Blvd.
Ogden, Utah 84401

Re: Acceptance of Proposal to Change K50EJ to Channel 52

Dear John:

Pursuant to your conversations with John Reim and in keeping with the Utah Master Plan for Translators and LPTV Stations, we hereby offer our consent to the proposed channel change for K50EJ to move from 50 to 52 to allow KEJT-LP to move from channel 48 to channel 50. This consent, however, is firmly conditioned upon agreement to and satisfaction of the following terms:

- KEJT-LP shall be responsible for all costs and expenses relating to the preparation and filing of a displacement application for K50EJ on Form 346 as well as costs and expenses relating to the actual rechanneling. This shall include any and all FCC filing fees, associated legal fees and expenses, engineering studies and any other related expenditures.
- In the event that there are technical difficulties (such as interference) that arise from K50EJ's transition to and operation on channel 52, it shall be KEJT-LP's financial obligation to cover the costs deemed necessary by KBYU personnel to alleviate the problems. This includes the provision of equipment such as new antennas, as well as installation or engineering costs. If, for any reason, such technical difficulties are deemed incurable by KBYU personnel or K50EJ's move to Channel 52 is otherwise deemed unsatisfactory, KEJT-LP must agree to give consent and allow K50EJ to move back to its original channel 50 allotment and must cover all reasonable costs associated therewith — even if KEJT-LP cannot find a suitable replacement channel for its own operations.
- In the *Sixth Report and Order* which was released last year, the Commission indicated that it would eventually like to see all the TV station channels limited to the core TV spectrum channels 7 through 51. In the event that K50EJ is displaced at some future time due to its use of channel 52, while channel 50 is still protected as part of the core

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KBYU

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WILKINSON BAKER KNAUER

Mr. John Terrill

June 30, 1999

Page 2

spectrum, KEJT-LP must agree to give consent and allow K50EJ to move its operations back to channel 50 and must cover all reasonable costs associated therewith — even if KEJT-LP cannot find a suitable replacement channel for its own operations.

Upon receipt of a written acceptance of the above terms and conditions governing our consent, we will be happy to cooperate and proceed with the acts necessary to change K50EJ to channel 52 to accommodate your request to move KEJT-LP to channel 50.

Sincerely,

Brad Farnsworth
Brigham Young University

Accepted & Agreed to:

John Terrill

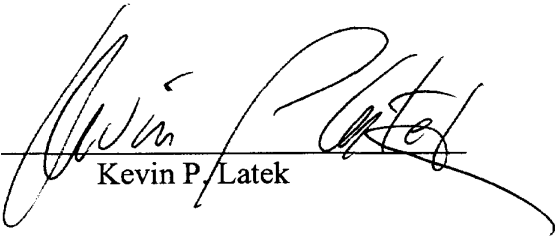
CERTIFICATE OF SERVICE

I, Kevin P. Latek, an attorney with Dow, Lohnes & Albertson, PLLC, do hereby certify that on this 12th day of July 1999, I caused a copy of the foregoing Petition to Deny to be served by hand delivery to the following:

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Counsel to Brigham Young University



Kevin P. Latek

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MM Docket No. 99-197
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TO: Chief, Video Services Division

DECLARATION OF JOHN TERRILL

I am John Terrill, General Manager of KEJT-LP, Salt Lake City, Utah, which is licensed to Telemundo of Northern California Licensee Corporation. I have reviewed the foregoing Comments and found the factual matters set forth therein to be true to the best of my knowledge and belief.

I declare under penalty of perjury that the foregoing is true and correct.

By


John Terrill

Date:

July 12, 1999